

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midwest Independent Transmission System Operator, Inc.))	Docket No. RT01-87-001
---	--------	-------------------------------

COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.211, the Illinois Commerce Commission ("ICC") hereby respectfully submits these Comments on the August 31, 2001, filing submitted by the Midwest Independent System Operator ("Midwest ISO") in the above-captioned docket ("Midwest ISO Aug. 31 Filing"). The Midwest ISO August 31 Filing constitutes its Supplemental Order No. 2000¹ RTO Compliance Filing, as directed by the Commission, to reflect the effect that the events since the time of its original Order 2000 compliance filing have had on the Midwest ISO's scope and configuration. *Illinois Power Company, et al.*, 95 FERC ¶61,183 at ¶61,647 (2001)("Settlement Order"). The ICC respectfully requests that the Commission (1) not approve the Midwest ISO's scope and configuration; (2) immediately initiate an RTO mediation proceeding for the Midwest region; and (3) defer ruling on the Midwest ISO's satisfaction of Function 8 of Order 2000 (Inter-Regional Coordination).²

¹ Order No. 2000, *Regional Transmission Organizations*, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. and Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. and Regs. ¶ 31,092 (2000).

² In the interest of time and space, the ICC does not reiterate positions advanced in its Comments on the Midwest ISO's Initial Order 2000 Compliance filing but, instead, incorporates and advances those positions, with the exception of the scope and configuration position, by reference herein and respectfully requests that the Commission find in accordance therewith. *See*, ICC Comments, *Midwest Independent System Operator, Inc.*, Docket No. RT01-87-000 (filed Mar. 9, 2001).

I. INTRODUCTION AND BACKGROUND

On September 16, 1998, the Commission conditionally approved the application of ten transmission-owning public utilities to transfer operational control of their jurisdictional transmission facilities to the Midwest ISO.³ Subsequently, on December 20, 1999, the Commission conditionally authorized the formation of the Alliance Regional Transmission Organization (“Alliance RTO”).⁴ As a result, the Midwest region is currently set to host more than one RTO.

Initially, while acknowledging that an RTO larger and with fewer gaps than proposed by the Midwest ISO would have significant benefits, the Commission approved the Midwest ISO’s scope and configuration as consistent with the ISO principles established in Order 888.⁵ Subsequently, however, several transmission owning utilities in Illinois made requests to withdraw from the Midwest ISO (“Withdrawing Illinois Utilities”).⁶ The requests to withdraw these utilities from the Midwest ISO added to the serious seams problems arising because of the existence of two RTOs the Midwest region.

The Midwest ISO made its Order 2000 Compliance Filing on January 16, 2001, when the Illinois utilities’ petitions to withdraw from the Midwest ISO were pending and resolution of the petitions was uncertain. At that time, the Midwest ISO specifically requested that the Commission find the Midwest ISO in compliance with the Order 2000 scope and configuration requirement based on what was then the status-quo, i.e., with the Withdrawing Illinois Utilities

³ *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶61,231 (1998)(“MISO I Order”).

⁴ *Alliance Companies, et al.*, 89 FERC ¶ 61, 298 (1999).

⁵ MISO I Order, slip op. at 33.

⁶ See, Notice of Withdrawal, *Illinois Power Company*, Docket No. ER01-123-000 (filed Oct. 13, 2000); Notice of Withdrawal, *Central Illinois Light Co., et al.*, Docket No. ER01-731-000 (filed Dec. 20, 2000); Notice of Withdrawal, *Exelon Corporation, et al.*, Docket No. ER01-780-000 (filed Dec. 22, 2000); Notice of Withdrawal, *Union Electric Company, et al.*, Docket No. ER01-966-000 (filed Jan. 16, 2001).

included in the Midwest ISO's configuration.⁷ The Midwest ISO admitted concern that the departure of the Withdrawing Illinois Utilities from the Midwest ISO would severely compromise the Midwest ISO's ability to satisfy the Order 2000 scope and configuration requirement.⁸ The Midwest ISO believed that substantive mitigation efforts would need to be taken in such an event.⁹

On January 24, 2001, the Commission ordered the initiation of settlement discussions, the purpose of which was to address the withdrawal petitions and the associated myriad of problems with the development of an RTO in the Midwest region ("Midwest Settlement Discussions").¹⁰ Thereafter, on May 8, 2001, the Commission approved an Offer of Settlement that resulted from the Midwest Settlement Discussions.¹¹ As part of the Settlement, the Withdrawing Illinois Utilities were allowed to withdraw from participation in the Midwest ISO.¹² The part of the Settlement that formed the basis for the mitigation of seams that would develop from the utilities' withdrawals was the execution by the Midwest ISO and the Alliance Companies of an Inter-RTO Cooperation Agreement ("IRCA"). The IRCA, if implemented in a diligent and timely manner, would help mitigate the seams problems in the Midwest region. As a result, approval of the Settlement, in and of itself, did not resolve the problems that arise from the existence of multiple RTOs across a single, natural market. Instead, as noted by the Commission, "the Settlement and Cooperation Agreement both merely provide steps on a path meant to arrive at a seamless Midwest market."¹³

⁷ Midwest ISO Jan. 16 Filing at 5.

⁸ See, Midwest ISO Aug. 31 Filing at 2-3.

⁹ *Id.*

¹⁰ *Illinois Power Company*, 94 FERC ¶61,069 (2001).

¹¹ *Illinois Power Company, et al.*, 95 FERC ¶61,183 (2001)("Settlement Order").

¹² See, Offer of Settlement at Article IV.

¹³ Settlement Order, slip op. at 35.

Several State Commissions from the Midwest region participated in the Midwest Settlement Discussions leading up to the Offer of Settlement. The Midwest State Commissions' stated goal was to achieve a seamless wholesale power market that would cover the entire natural Midwest market. Although the Settlement did not provide for a single Midwest RTO, the Midwest State Commissions did not contest the Settlement.¹⁴ In Comments filed on the Offer of Settlement, the Midwest State Commissions gave eleven examples of how the Offer of Settlement would make the prospect of achieving seamlessness uncertain without further action.¹⁵ Nevertheless, the Midwest State Commissions took the position that certain aspects of the Settlement, *if implemented in a diligent and timely manner*, would further the goal of establishing a seamless market in the Midwest region. The position was contingent on all stakeholders and interested parties working cooperatively on steady and swift progress toward, and achievement of, each aspiration of the Settlement because significant seams will exist in the Midwest market absent full and timely implementation of each aspect and aspiration of the Settlement.

In the Settlement Order, the Commission required the Midwest ISO to supplement its Order 2000 Compliance Filing to reflect the effect of the Settlement on the Midwest ISO's scope and configuration.¹⁶ On August 31, 2001, the Midwest ISO made its Supplemental Compliance Filing on scope and configuration. While the Settlement permitted the petitioning Illinois

¹⁴ See, Initial Comments of the State of Michigan and the Michigan Public Service Commission, the Illinois Commerce Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission, the Iowa Utilities Board, the Missouri Public Service Commission, the Public Service Commission of Wisconsin, the Pennsylvania Public Utility Commission, the Kentucky Public Service Commission and the Public Service Commission of West Virginia, *Illinois Power Co., et al.*, Docket No. ER01-123-000, *et al.* (filed Mar. 30, 2001) ("Midwest State Commissions' Comments on Settlement Agreement").

¹⁵ For example, the Midwest State Commissions identified the following flaws in the Settlement's design: (1) generators outside the Midwest ISO/Alliance RTO super-region will continue to pay pancaked rates to cross one of the two RTOs and access load in the other; (2) there is no certainty that any of the interregional cooperation elements of the Settlement, including the super-regional rate, will remain in place after December 31, 2004; and (3) the existence of two RTOs in the Midwest region will impose unnecessary cost duplication.

utilities to withdraw from the Midwest ISO, the Midwest ISO relies in large part on the IRCA as providing sufficient mitigation for their departure. Specifically, the Midwest ISO states as follows:

As a result of the Settlement Agreement, the three companies seeking to depart the Midwest ISO and join the Alliance RTO were permitted to do so; however, the Settlement Agreement presented several important provisions which, when taken as a whole, provide adequate mitigation for the departure of the Illinois Companies and allow the Midwest ISO to remain a compliant RTO consistent with all facets of the Commission's Order No. 2000 requirements. The primary provision of the Settlement Agreement availing the Midwest ISO the opportunity to become a fully compliant RTO are found within specific articles in the Inter-RTO Cooperation Agreement ("IRCA")

Midwest ISO Aug. 31 Filing at 3-4.

Unfortunately, as explained in greater detail, *infra*, the execution of the Settlement Agreement is not occurring in full and complete accordance with its terms or the expectations of the parties involved in the Settlement. The basis for approving the Midwest ISO's scope and configuration, as a result, is not fulfilled. The ICC respectfully requests that the Commission not approve the Midwest ISO's scope and configuration. In addition, the ICC respectfully requests that the Commission initiate a mediation process for the Midwest region to address current RTO development deficiencies in the Midwest.

The ICC's request is consistent with and, in part, reiterates the request made by the ICC and certain other state commission in a Request for Rehearing¹⁷ of the Commission's Order entered on July 12, 2001, that approved the Alliance RTO's scope and configuration. *Alliance Companies, et al.*, 96 FERC ¶61,052 (2001) ("July 12 Alliance Order"). The Commission issued the July 12 Alliance Order simultaneously with orders addressing RTO development in other

¹⁶ Settlement Order at ¶61,647.

¹⁷ See, Request for Rehearing of the Illinois Commerce Commission, the Michigan Public Service Commission, the Indiana Utility Regulatory Commission, the Pennsylvania Public Utility Commission and the Public Utilities

areas of the country. The Commission stated a clear policy objective in the companion orders regarding the need to establish one RTO for each of the country's four natural markets, i.e., the Northeast, Southeast, Midwest and West.¹⁸ Further, the Commission took steps to effectuate this policy by initiating mediation proceedings in the Northeast and Southeast.¹⁹

As stated in the Midwest State Commissions' RFR of the July 12 Alliance Order, the Commission demonstrated tremendous initiative on July 12 when it articulated its newly adopted policy to have a single RTO in each of the nation's four natural markets. The Midwest State Commissions applauded the Commission's stated RTO objectives as beneficial to the public interest in the Midwest, but noted that the Commission did not, despite its single RTO policy, initiate a mediation process for the Midwest region. The Midwest State Commissions recognized that the Commission did not take this step, in part, because of the existence of a Settlement Agreement and IRCA in the Midwest region.²⁰ The Midwest State Commissions' RFR of the July 12 Alliance Order recommended that the Commission rehear its approval of the Alliance RTO's scope and configuration because the Settlement and IRCA have not, to date, been implemented as envisioned. The Midwest State Commissions further requested that the Commission initiate a mediation process in the Midwest for purposes of remedying the problems

Commission of Ohio, *Alliance Companies, et al.*, Docket Nos. RT01-88-000, *et al.* (filed Aug. 13, 2001) ("Midwest State Commissions' RFR of the July 12 Alliance Order").

¹⁸ See, Order Rejecting RTO Filings, *Southwest Power Pool, Inc., et al.*, Docket No. RT01-34-000, *et al.* at 9 (July 12, 2001).

¹⁹ See e.g., Order Initiating Mediation, *Regional Transmission Organizations*, Docket Nos. RT01-100-000 (July 12, 2001).

²⁰ July 12 Order, slip op. at 15 (supporting its determination that the Alliance RTO satisfies scope and configuration, in part, on "the fact that Alliance grew ... contractually (with the execution of the Cooperation Agreements with the Midwest ISO)"). While the Commission's July 12 Alliance Order states that the Commission is also relying "on the reasons previously stated in the Alliance III Order, and the fact that the Alliance RTO grew ... physically (with the addition of the new members as well as the departing Midwest ISO members)" to support the Commission's decision on scope and configuration, these factors do not constitute a sufficient basis for such a finding absent the full and complete implementation of IRCA.

encountered in implementing an interregional cooperation approach to achieving adequate RTO scope and configuration in the Midwest.

The problems in implementing an interregional cooperation approach to achieving adequate RTO scope and configuration in the Midwest have prevented the Midwest ISO, in addition to the Alliance RTO, from satisfying the Order 2000 scope and configuration requirement. Accordingly, the ICC reaches the same overall conclusion in this docket with respect to the Midwest ISO as it has with respect to the Alliance RTO's scope and configuration. Neither the Midwest ISO nor the Alliance RTO can demonstrate proper scope and configuration unless and until the IRCA and the Settlement Agreement are properly implemented. The ICC, as a result, respectfully reiterates and emphasizes its request for the Commission to initiate a mediation process for the Midwest region to address current RTO development problems in the Midwest. In addition, the ICC requests that the Commission defer ruling on the Midwest ISO's satisfaction of the Order 2000's Function 8 (Inter-Regional Coordination), consistent with the Commission's action with respect to the Alliance RTO.

III. DISCUSSION

A. The Midwest ISO Fails to Satisfy the Scope and Configuration Requirements of Order 2000.

Order 2000 established the policy that an RTO must serve an appropriate region. While Order 2000 did not specifically define regions across the country, it is recognized that the purpose of an RTO is to support regional power markets in terms of reliability, operations and wholesale trading; and the scope and configuration of an RTO should be designed toward that purpose.²¹ In sum, an RTO should be of “sufficient scope and configuration to permit the [RTO] to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.”²²

The best way for an RTO to satisfy scope and configuration is by being established across the entirety of a regional market because a single RTO eliminates the risks of broken inter-regional cooperation agreements or inconsistent interpretations of such agreements. In Order 2000, the Commission stated, nonetheless, that if an RTO’s boundaries fail to cover an appropriate region, the Commission would allow the RTO to prove “effective scope” by coordination and agreements with neighboring entities, or by participating in a group of RTOs with either hierarchical control or a system of very close coordination in order to satisfy Order 2000.²³ The Commission elaborated that “an RTO application that proposes to rely on ‘effective scope’ to satisfy Characteristic 2 [scope and configuration] must demonstrate that the

²¹ Order No. 2000, slip op. at 24-57. In listing factors for consideration in setting RTO boundaries, the Commission stated that boundaries should, among other things, recognize trading patterns, encourage competitive energy markets, not unnecessarily split existing control areas or existing regional transmission entities, encompass contiguous geographic areas and highly interconnected portions of the grid, and take into account useful existing regional boundaries (such as NERC regions). *Id.* at 258-63.

²² 18 C.F.R. §35.34(j)(2).

²³ Order No. 2000, slip op. at 258.

arrangement it proposes to eliminate the effect of seams is *the practical equivalent of eliminating the seams by forming a larger RTO.*”²⁴

In this case, the Midwest ISO’s configuration is inconsistent with the boundaries of the natural Midwest market. Indeed, the Midwest ISO openly acknowledges that its “physical configuration is not ideal.” Midwest ISO Aug. 31 filing at 9.²⁵ Accordingly, if two RTOs are to exist in the Midwest region, effective inter-regional cooperation between the Alliance RTO and the Midwest ISO must be created so that seams problems are mitigated in satisfaction of the practical equivalent test.

The Settlement and its associated IRCA were intended to mitigate seams problems within the Midwest region created by developing two separate RTOs for the region.²⁶ As a result, the Midwest ISO relies, in large part, on the Settlement and the IRCA as the basis for a Commission finding that the Midwest ISO satisfies scope and configuration.²⁷ In particular, the Midwest ISO recognizes its dependency on the IRCA for sufficient scope and configuration as follows:

Due to the intertwined configuration and expansive common seams between the Midwest ISO and the Alliance on the Midwest ISO’s eastern side, the question of the reasonableness of the Midwest ISO’s configuration cannot be separated from the adequacy of the inter-RTO cooperation and seams management provided by the IRCA.

Midwest ISO Aug. 31 Filing at 10.

The adequacy of the Settlement and IRCA in mitigating the seams that exist in the Midwest region is dependent on the Midwest ISO’s and Alliance Companies’ ability to satisfactorily implement the provisions of the Settlement and the IRCA. The Midwest ISO

²⁴ *Id.* (emphasis added).

²⁵ The Midwest ISO configuration is particularly troubling for Illinois because Midwest ISO members Central Illinois Light Company and Southern Illinois Power Coop. are entirely embedded within an area that is currently scheduled to be part of the Alliance RTO.

²⁶ *See*, Settlement Order, slip op. at 35.

²⁷ Midwest ISO Aug. 31 Filing at 4.

specifically recognizes the dependency on satisfactory implementation as follows: “The foundation for a seamless market in the Midwest depends on the timely and successful implementation of the IRCA by the Midwest ISO and the Alliance RTO.”²⁸ The Midwest ISO further expresses the recognized dependency as follows: “*If [the IRCA and its implementation protocols] are well-implemented* and the two RTOs also function effectively on their own, the Cooperation Agreement is likely to be effective in mitigating the realignment of the Departing Companies and in managing the intertwined seams between the two transmission organizations.”²⁹ Unfortunately, neither the IRCA nor the Settlement as a whole is being implemented so as to obtain seamless market objectives or the requirements of Order 2000.

As the Midwest State Commissions noted in their Comments on the Settlement, the Settlement’s dependency on the IRCA meant that the process toward the mitigation of harmful seams effects in the Midwest region was only beginning.³⁰ In other words, the Settlement created a transition mechanism to be implemented with the goal of eliminating the seams that exist because of the multiple RTOs in the Midwest region. The Settlement would only achieve the goal of establishing a seamless market in the Midwest region if implemented in a diligent and timely manner. Accordingly, in this case, the Commission should base any finding of “effective scope” “on steady and swift progress toward, and achievement of, each aspiration set forth in the Settlement Agreement.”³¹ Such timely and diligent implementation has not materialized.

The Settlement required the development of procedures and protocols to ensure compatibility across the region in many vital market design aspects, including a real-time

²⁸ *Id.* at 16.

²⁹ *Id.* at 25 (emphasis added).

³⁰ The Commission recognized this in the July 12 Alliance Order by stating, “the Settlement and the Cooperation Agreement merely provide steps on a path to arrive at a seamless Midwest market.” July 12 Alliance Order at 35; *see also*, Settlement Order, slip op. at 35 (recognizing that the Settlement merely establishes a transition mechanism).

balancing market, long-term congestion management and generator interconnection practices. These aspects lie at the heart of establishing a market-enabling framework. According to James P. Torgerson, President and Chief Executive Officer of the Midwest ISO, “[t]he Midwest ISO views market design as including *all elements* associated with transmission service, from the first OASIS reservation, through credit policies, billings and settlement, and dispute resolution.” Midwest ISO Aug. 31 Filing, Torgerson Affidavit at 16 (emphasis added). More specifically, Mr. Torgerson explained the cooperative intent of the IRCA as follows:

[T]he IRCA ... requires the Midwest ISO and the Alliance RTO to delineate twenty areas in which the two RTOs are required to agree on compatible protocols and procedures. The IRCA allows the initial design within each of the RTOs to be based on a common framework. Instead of developing the procedures and protocols separately and then attempting to coordinate at the seams, the IRCA requires common development, in the same timeframe, by the two RTOs in a collaborative setting.

Id., Torgerson Affidavit at 14.

IRCA implementation, unfortunately, has not proceeded as characterized by the Midwest ISO along the lines of “common development, in the same timeframe, by the two RTOs in a collaborative setting.” In fact, Mr. Torgerson candidly acknowledged that the IRCA implementation process has not generated ideal or appropriate outcomes.³² Mr. Torgerson specifically notes that the Midwest ISO and Alliance Companies have failed to reach agreement on a common energy imbalance market approach,³³ and are having problems reaching agreement on a common generator interconnection protocol³⁴ as well as a long-term congestion management protocol.³⁵ Mr. Torgerson further notes operational problems arising from Central Illinois Light Company’s circumstances as an “electrical island” within the Midwest ISO

³¹ Midwest State Commissions’ Comments on Settlement Agreement at 4.

³² *See, Id.*, Torgerson Affidavit at 12 – 13.

³³ *Id.*, Torgerson Affidavit at 12.

³⁴ Midwest ISO August 31 Filing at 78.

surrounded by Alliance Companies, a problem that the Midwest ISO and Alliance Companies have not yet been able to sufficiently address.³⁶ Most conclusively, the Midwest ISO concludes that “[a]t this point, little time remains before the December 15, 2001 operational date and *it is unlikely that all elements of the IRCA will be implemented by that date;*”³⁷ and Mr. Torgerson states that “the Midwest ISO remains guarded on how well the IRCA will work”³⁸ If a single Midwest RTO were in existence, all of the market design aspects referenced *supra* in the quote from Mr. Torgerson would be developed consistently and seamlessly across the entire region.

The Midwest ISO also states that it is “steadfastly dedicated to the development of the compatible procedures and protocols and is working judiciously to continue to convert these paper agreements into functional reality upon the commencement of full-scale operations in order to meet the needs of market participants.”³⁹ The ICC does not at this time question the Midwest ISO’s dedication to these market-supporting goals. Yet, in the Midwest, as is clear from Mr. Torgerson’s express statements, many of these vital market design aspects are currently being developed independently by the Alliance Companies and by the Midwest ISO, including but not necessarily limited to, long-term congestion management, generation interconnection, transmission planning, security coordination, and real-time balancing. The simple reason is that there is currently only one prospective RTO--the Midwest ISO--pursuing the desirable objective. On the other side, there currently is no Alliance RTO or prospective Alliance RTO for the Midwest ISO to work with.⁴⁰ There are only vertically integrated, transmission owning Alliance

³⁵ *Id.*, Torgerson Affidavit at 12.

³⁶ *Id.*, Torgerson Affidavit at 12.

³⁷ *Id.* at 16 (emphasis added).

³⁸ *Id.*, Torgerson Affidavit at 20.

³⁹ *Id.* at 15.

⁴⁰ The Alliance RTO has not yet been formed as an entity and it has not yet received FERC approval to operate as an RTO. While the Midwest ISO, similarly, has not yet received FERC approval to operate as an RTO, the Midwest ISO has been in existence as an organization since 1999 to act in the collective best interests of all of its

Companies with a vision for an Alliance RTO. The Commission recognized this shortcoming in the Alliance Companies' plans and, in the July 12 Alliance Order, directed them to immediately establish an independent board to make further RTO development decisions.⁴¹ The Alliance Companies have, so far, failed to do so. Nonetheless, even if the Midwest ISO is not primarily responsible, the effect of unsuccessful IRCA implementation must fall upon the Midwest ISO because the Settlement and the IRCA indelibly tied the commitment of the Midwest ISO to the commitment of the Alliance Companies (and the Alliance RTO once it is developed).

The Midwest ISO, nonetheless, states that “[t]he substance of what has been accomplished, plus the obligation to continue its coordination with the Alliance RTO, is a sound basis to conclude that the Midwest ISO meets the scope and configuration requirement of Order No. 2000;”⁴² and Mr. Torgerson concludes that “[t]he promise of seamless access to Midwest markets can be accomplished by the Commission granting the Midwest ISO status as a fully compliant RTO under Order No. 2000.”⁴³ Based on experience to date, the ICC respectfully disagrees that “what has been accomplished” even with “the obligation to continue” provides any basis for the Commission to approve the Midwest ISO’s scope and configuration. The “promise of seamless access to Midwest markets” can only be achieved when each prospective RTO in the Midwest is able to demonstrate compliance with all characteristics and functions required by Order 2000 and, if there are more than one such RTO in the Midwest, such multiple RTOs can operate as the “practical equivalent” of a single RTO. The ICC respectfully avers that

members (which include transmission users as well as transmission owners). References in the Midwest ISO’s pleading, *see, e.g.*, Torgerson Affidavit at Sections V and VI, to the Alliance RTO should not be interpreted as though the Alliance RTO exists.

⁴¹ July 12 Alliance Order, slip op. at 13.

⁴² Midwest ISO Aug. 31 Filing at 35.

⁴³ *Id.*, Torgerson Affidavit at 20.

these conditions have not yet been satisfied by the prospective RTOs in the Midwest region and are unlikely to get satisfied unless the Commission takes action to direct otherwise.

The Midwest ISO also points to the Settlement's super-regional rate requirements as a basis for the Commission to find sufficient mitigation of the seams. The Midwest ISO states that the super-regional rate agreement that eliminates much of the rate pancaking for inter-super-region transmission transactions is a great benefit to customers "compared to the pancaking that would have otherwise occurred absent the Super Region Rate Methodology."⁴⁴ This is an irrelevant comparison. The proper comparison would be to compare the benefits resulting from the super-regional rate methodology to those that would result either from having a single RTO in the Midwest region or from having the "practical equivalent" of a single RTO in the Midwest region.⁴⁵ The Midwest ISO states that the super-regional rate agreement is a "significant step" forward in creating seamless access to energy markets. Regardless of whether the step is "significant" or small, it is insufficient to obtain the Commission's stated goal for shared RTO scope and configuration—practical equivalence to a single RTO.

Ultimately, the lack of effective collaboration between the Alliance Companies and the Midwest ISO means that the Midwest seams problems remain, and are likely to continue remaining, unresolved. The implementation of the Settlement in conjunction with the Settlement's inherent market design flaws,⁴⁶ is failing to achieve the "practical equivalent" of

⁴⁴ *Id.* at 34. The Midwest ISO recognizes, however, that the super-regional rate methodology does not eliminate pancaking with respect to charges arising under (1) Schedule 1 (scheduling); (2) Schedule 2 (reactive support and voltage control); (3) separate RTO administrative adders; or (4) provisions for losses. *Id.* Neither does the super-regional rate methodology eliminate transmission rate pancaking to access generators outside the super region. Development of a single Midwest RTO would eliminate all of this pancaking.

⁴⁵ Midwest ISO witnesses Fox-Penner and Pfeifenberger argue that the IRCA outcome should not be compared to "an abstract ideal configuration of the two transmission organizations, but, rather, [should be] compared to realistically achievable alternative configurations." *Id.*, Affidavit of Peter S. Fox-Penner and Johannes P. Pfeifenberger at 29. However, witnesses Fox-Penner and Pfeifenberger do not explain why they hold such beliefs nor do they describe the range of what they believe to be "realistically achievable alternative configurations."

⁴⁶ *See, supra* at n. 15.

having a single RTO in the Midwest. Successful implementation of the Settlement and the IRCA is a prerequisite to any possible Commission finding of adequate scope and configuration. The Midwest ISO has not demonstrated, and is not able to sufficiently demonstrate, that the Settlement and IRCA are being fully and timely implemented. The Midwest ISO must be able to make such a showing prior to any positive Commission finding on scope and configuration.

B. Initiation of a Midwest Mediation Process is the Appropriate Remedy to Address the Current Midwest RTO Development Problems.

The Commission issued Orders addressing the Northeast and Southeast regions on July 12, 2001. In its Northeast and Southeast Orders, the Commission expressed its new policy for obtaining a single RTO for each region based on the following rationale:

The Commission has been attempting to facilitate the development of large, regional transmission organizations reflecting natural markets since we issued Order No. 2000. We favor the development of one RTO for the Northeast, one RTO for the Midwest, one RTO for the Southeast and one RTO for the West. Through their independence from market participants, RTOs can ensure truly non-discriminatory transmission service and will instill confidence in the market that will support the billions of dollars of capital investment in generation and demand side projects necessary to support a robust, reliable and competitive electricity marketplace. RTOs are the platform upon which our expectations of the substantial generation cost savings to American customers are based.⁴⁷

The Commission took steps to effectuate this policy by ordering parties in the Northeast and Southeast to engage in mediation.⁴⁸ Notably, the Commission admitted a willingness to “consider using mediation in other RTO regions in the future as appropriate.”⁴⁹ Under the circumstances described *supra*, it is exceedingly appropriate for the Commission to initiate RTO mediation in the Midwest region.

⁴⁷ See, Order Rejecting RTO Filings, *Southwest Power Pool, Inc., et al.*, Docket No. RT01-34-000, *et al.* at 9 (July 12, 2001)(emphasis added).

⁴⁸ See e.g., Order Initiating Mediation, *Regional Transmission Organizations*, Docket Nos. RT01-100-000 (July 12, 2001).

⁴⁹ *Id.* at 1 n.1.

The Midwest ISO, on the other hand, recommends that “the Commission should continue to monitor the progress made in implementing the IRCA over the next two years.”⁵⁰ The Midwest ISO’s recommendation for continued, passive monitoring is insufficient given the present circumstances surrounding IRCA implementation to date. Rather, as Commissioner Massey observed in his concurrence to the Commission’s July 12 Alliance Order, the current circumstances present the Commission with a “golden opportunity” to achieve RTO rationalization in the Midwest region. The Commission should take this opportunity to address the RTO development in the Midwest region. Indeed, the minimal progress since July 12, 2001, in resolving the RTO development difficulties in the Midwest region makes strong Commission action to address these problems even more urgent.

Therefore, the ICC respectfully requests the immediate initiation of an RTO mediation process in the Midwest to address the problems arising out of the Settlement implementation. In particular, on the agenda for the Midwest mediation should be: (1) the Settlement implementation problems described *supra* and the inability of both the Midwest ISO and the Alliance RTO to demonstrate proper RTO scope and configuration absent thorough and timely progress in achieving implementation of each aspect and aspiration of the IRCA; (2) the potential usefulness of implementing the interregional transmission service coordinator provision of Article XII of the IRCA; and (3) other potential avenues for continued and expanded RTO development in the Midwest, either building on the IRCA or a superior alternative, including the potential for the development of a single RTO that would encompass the entire Midwest natural market. The latter was urged as follows by Commissioner Massey in his concurrence to the Commission’s July 12 Alliance Order:

⁵⁰ Midwest ISO Aug. 31 Filing at 26.

To facilitate the timely development of the single Midwest RTO, which our orders today state as a clear objective, I would direct Alliance, the Midwest ISO, and the Southwest Power Pool to a mediation proceeding with the same objective and timetable as that for the Northeast and Southeast RTOs. The settlement that we approved between the Alliance and Midwest ISO was a bold step in the right direction, but those institutions should have been directed toward a single RTO from the outset. And SPP would add even greater scope to the Midwest RTO. In this order, we fail to establish a mediation proceeding for a Midwest RTO. I would have done so and in this order directed Alliance to participate along with SPP and the Midwest ISO.

July 12 Alliance Order, Massey Concurrence at 2 (emphasis added).

C. The Commission Should Defer Ruling on the Midwest ISO's Satisfaction of the Order 2000's Function 8 (Inter-Regional Coordination).

The Midwest ISO argues that the IRCA “meets the standard of Inter-Regional Coordination (Function 8) as set forth in Order No. 2000.”⁵¹ The ICC does not, herein, take a position on whether the IRCA satisfies the requirements of Order 2000's Function 8. The ICC does note, however, that in the July 12 Alliance Order, the Commission deferred ruling on this issue with respect to the Alliance RTO. The Commission stated as follows:

In the order addressing the Settlement, the Commission noted that both the Settlement and Cooperation Agreement merely provide steps on a path to arrive at a seamless Midwest market, and that various mechanisms will be developed and filed for review by the Commission and interested parties. [footnote omitted.] Therefore, we will defer ruling on this issue [compliance with Function 8] until final mechanisms have been agreed upon.

July 12 Alliance Order at 52. The Commission should act consistently for the Midwest ISO by deferring its ruling on this issue.

IV. CONCLUSION

⁵¹ *Id.*, Torgerson Affidavit at 20.

WHEREFORE, for each and all of the aforementioned reasons, the Illinois Commerce Commission respectfully requests that the Commission: (1) not approve the Midwest ISO's scope and configuration; (2) immediately initiate an RTO mediation proceeding for the Midwest region; (3) defer ruling on the Midwest ISO's satisfaction of Order 2000's Function 8 (Inter-Regional Coordination); and (4) for any and all other appropriate relief.

September 21, 2001

Respectfully submitted,

/s/ Sarah A. Naumer

Myra Karegianes
General Counsel and
Special Assistant Attorney General

Sarah A. Naumer
Thomas G. Aridas
Special Assistant Attorneys General
Illinois Commerce Commission
160 N. LaSalle, Suite C-800
Chicago, Illinois 60601
(312) 793-2877